

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



June 14, 2001

TO: ALL PARTIES OF RECORD IN APPLICATION 00-11-038 ET AL. AND
RULEMAKING 99-11-022

Decision 01-06-015 is being mailed without the Concurrence of Commissioner
Carl Wood. The Concurrence will be mailed separately.

Very truly yours,

/s/ LYNN T. CAREW BY PSW
Lynn T. Carew, Chief
Administrative Law Judge

LTC:hkr

Decision 01-06-015 June 13, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)
Order Instituting Rulemaking into Implementation of Public Utilities Code Section 390.	Rulemaking 99-11-022 (Filed November 18, 1999)

O P I N I O N**Summary**

This decision is another interim measure we adopt to bring stability to the electric supply arrangements represented by the long-term contracts between utilities and sellers known as Qualifying Facilities (QFs). In this decision, we pre-approve three voluntary QF contract amendments for Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) that address the special circumstances

presented by the dysfunctional wholesale market in California. We also direct SCE to make payments of 15% of all amounts owed by the utilities to any QF which demonstrates an immediate need for such funds to continue or reestablish safe and reliable operation.

In Decision (D.) 01-030-067 (March 27, 2001) we ordered utilities to pay QFs going forward in accordance with their existing contracts as modified by certain changes to the Short Run Avoided Cost (SRAC) formula. In April, we initiated Investigation (I.) 01-04-027 into the nature and status of the delivery obligations represented by the long-term contracts, recognizing that ongoing disputes over payment raise fundamental questions about these obligations. With this decision we take another step toward resolving disputes in a way that will preserve the benefit of these long-term contracts for ratepayers.

Background

QF energy under long-term contracts represents a significant component of energy provided by utilities to customers. Non-payment results in a significant hardship for these generators. In D.01-03-067, the Commission ordered utilities to resume payment for deliveries going forward. The Commission also modified—on an interim basis—the method for calculating SRAC prices for QFs. One of the significant changes was that the gas input element of the formula for payment for energy is determined in relation to the price of gas at Malin, rather than the price at Topock. The Commission has continued to review the appropriate method for setting SRAC and conducted a workshop on potential changes on May 1, 2001. The Commission's Energy Division issued a workshop report describing the positions of the parties at the workshop.

In addition, the Commission issued I.01-04-027, pursuant to which SCE, SDG&E and PG&E were required to submit reports on the status of QF

operations. The utilities have reported that a number of QFs have reduced the amount of electricity they generate. In addition, some QFs have sought, in a variety of forums, to suspend their contractual commitments to sell power to utilities under contract prices, and instead be allowed to sell to any buyer at market prices.

Discussion

The Independent System Operator (ISO) has declared emergencies this year, leading to rolling blackouts. California consumers will likely face continued curtailments and rolling blackouts during the peak summer season. California ratepayers should therefore benefit from additional generation entering the market, especially at less than market prices. Due to the current shortages of electricity in California, the unprecedented levels of generation plants which are not producing and the unreasonably high wholesale market prices caused by flawed federal pricing policies, it is necessary for the Commission to take action to ensure that QFs generate as much electricity as reasonably possible, and at reasonable prices. In this order we will address partial payment of amounts owed, notwithstanding the existence of bona fide disputes over the amounts owed, in order to improve the financial condition of QFs so that they can resume production. We will also address contract modifications to provide incentives to maximize QF production.

A. Contract Modifications

The Commission is not at this time modifying the SRAC methodology adopted in D.01-03-067. The Commission will continue to investigate reasonable changes to that methodology. However, at this time the Commission reiterates its support for the use of non-standard contract modifications that can provide benefits to both ratepayers and QFs. In addition, the Commission will give clear guidance to utilities by specifying three such potential non-standard contract

modifications that the Commission would find reasonable. Any such modifications, consistent with this guidance, which are made prior to July 15, 2001 are deemed reasonable by the Commission:

1. Five-Year Fixed Price Option

The first approved modification is to replace the standard SRAC energy price terms with a fixed price for five years of 5.37 cents/kWh, as proposed in the comments of the Independent Energy Producers (IEP), dated March 23, 2001 in this proceeding. The Commission believes that this option could provide ratepayers with significant near term savings compared to current prices, as well as protecting ratepayers against price volatility for the next five years. QFs that are interested in such a non-standard pricing arrangement should be afforded the opportunity to modify their existing contracts. Contractual capacity payments will continue without modification.

2. Supplemental Payments to Ensure Full Generation

The second modification that the Commission finds reasonable is allowing supplemental payments above the specified SRAC for up to one year for QFs that demonstrate to the Commission's Energy Division¹ that the current SRAC is insufficient to recover the QF's actual fuel costs for producing electricity. As discussed in the report on the April 19 workshop, a number of QFs assert that the current SRAC provides insufficient reimbursement to cover all of the QF's fuel and operating costs. The contract modification approved today would ensure that for any QF so situated, sufficient compensation will be made to allow

¹ The Commission will extend to confidential documents submitted by QFs the same treatment provided to confidential documents submitted by public utilities under Pub. Util. Code § 583 and Commission General Order 96-A.

the QF to continue in operation. We invite parties to submit proposals on the criteria for demonstrating need.

Such supplemental payments should be capped so that the total energy price made to a QF does not exceed the lesser of the QF's actual fuel price or a price equal to what the SRAC would be if set using the price of gas at Topock for QFs selling to SCE and SDG&E, or an SRAC price using the average of Malin and Topock for QFs selling to PG&E. The workshop report indicates that a Topock-based SRAC price is the highest price indicated as being necessary to fully cover QFs' operating costs. This option will help ensure that all QFs are able to produce their full contract amount of power, which is vital to ensuring the reliability of the electric system in California during this time of shortages.

3. Incentive Payments for Generation Above Contract Amounts

The third approved modification addresses payments for excess QF generation. As the Commission did last year in D.00-08-022, we again find reasonable a modification to the standard SRAC pricing to provide a financial incentive for QFs to increase generation above their normal operating (baseline) levels. The eligibility requirements, baseline calculations and payment terms approved today are the same as those adopted in D.00-08-022.

However, since the California Power Exchange (PX) no longer exists, the payment terms approved today shall reflect 125% of an SRAC price based on the Topock gas price index, rather than 70% of the PX price as adopted in D.00-08-022 for QFs selling to SCE and SDG&E. We adopt an incentive price for QFs selling to PG&E that reflects 125% of an SRAC price based on an average of the Malin and Topock gas price indices. This approved contract amendment provides an incentive to QFs to provide as much additional generation as possible during these times of need.

The eligible hours criteria must also be changed since there is no PX. The eligible hours will be during any ISO declared emergency or when the utility concludes that extra energy would benefit ratepayers.

B. Back Payments

Through its investigative audits in the Rate Stabilization Proceedings, Application (A.) 00-11-038 *et alia*, the Commission is aware that PG&E and SCE did not make payments to QFs for deliveries for a number of months, while accumulating cash. As addressed by the Federal Energy Regulatory Commission (FERC) in its Order dated May 16, 2001, such failures to obtain payments may result in QFs being unable to continue to provide generation to serve customers in California. (FERC Docket No. EL00-95-020.) PG&E's need to make payments on its debts to QFs has been addressed in PG&E's bankruptcy proceeding. PG&E has been ordered to make payments of up to 20% of the back debt owed to its QFs. SDG&E has no such debts to QFs since it did not fail to make payments in prior months. This leaves SCE and its debts to its QFs for the Commission to address. To ensure the ability of all QFs to provide needed generation this summer, the Commission will require SCE to make payments of 15% of all amounts owed upon demonstration to the Commission's Energy Division by an individual QF that such back payments are necessary for the QF to remain in operation in a safe and reliable manner due to credit, cash-flow or other financial problems.² We invite parties to submit proposals on the criteria for demonstrating need.

² The Commission will extend to confidential documents submitted by QFs the same treatment provided to confidential documents submitted by public utilities under Pub. Util. Code § 583 and Commission General Order 96-A.

In making this directive, the Commission does not purport to decide the precise amount owed by utility buyers to QF sellers. We recognize that there are disputes about the precise amounts owed and the basis for computing them. This partial payment directive is premised on the Commission's obligation to assure adequate service by the retail utility. (Pub. Util. Code § 451.)

C. Reporting Requirements

As with all non-standard contract provisions, QFs have the discretion to opt for such changes. The Commission encourages the utilities to act expeditiously to enact any such changes requested by QFs. By giving the utilities guidance as to the reasonable nature of the modifications specified above, we hope that the utilities will not delay in making such modifications that provide benefits to ratepayers as well as QFs. While we invite utilities to file proposed standardized contract amendments to simplify the negotiation process, we do not wish the utilities to wait until such standardized amendments are approved by the Commission before modifying contracts at the QFs' request.

To evaluate the usefulness of the guidance provided today, the Commission will require each utility to provide a report on July 31, 2001 identifying the number of QFs requests for modifications to their existing contracts, the number of contracts the utilities have agreed to modify, and the number of requests the utility has not agreed to. These reports shall also state the number of QFs seeking back payments, the number of back payments the utility has agreed to make and the number of such requests that the utility has not agreed to. To the extent that there are any such requests for back payments or contract modifications that have not been agreed to by the utility, the utility should also state the reasons why the utility has not agreed to the QF's request.

D. Other Allowable Contract Modifications

In this decision, the Commission identifies a number of optional contract amendments that it finds reasonable. However, the Commission does not mean to suggest that these are the only potential contract modifications that it would find reasonable. These approved amendments should provide guidance for utilities regarding what type of amendments that the Commission would find reasonable. The Commission will likely find comparable modifications that provide similar ratepayer benefits to be reasonable. For example, the proposed contract amendment presented by the California Cogeneration Council in its June 5, 2001 comments provides the benefits sought by the Commission and is reasonable. Similarly, the amendment for five-year alternative “fixed SRAC pricing described in SCE’s June 12, 2001 supplemental comments is also reasonable.

E. Need for Expedited Consideration

Rule 77.7(f)(9) of the Commission’s Rules of Practice and Procedure provides in relevant part that:

“...the Commission may reduce or waive the period for public comment under this rule...for a decision where the Commission determines, on the motion of the party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, “public necessity” refers to circumstances in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. “Public necessity” includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period...would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver.”

We balance the public interest in quickly resolving QF pricing and payment issues against the public interest in having a full 30-day comment cycle on the proposed amendment. We conclude that the former outweighs the latter. We must respond quickly to provide additional assurance that as much QF generation is available as possible this summer.

Findings of Fact

1. California consumers will likely face continued curtailments and rolling blackouts during the peak summer season.
2. California consumers should benefit from additional generation, especially at less than market prices.
3. The Commission has a long-standing policy of supporting beneficial non-standard contract provisions.
4. Non-standard energy price terms of 5.37 cents/kWh fixed for five years are less variable than SRAC prices and will provide QFs with greater predictability of revenues.
5. An energy price based on the Topock price index is the highest price necessary to ensure that QFs recover their fuel costs.
6. Some QFs may not be able to continue in operation due to financial problems resulting from the lack of payment by PG&E and SCE for prior months.
7. CCC and SCE have presented reasonable proposed contract amendments, similar to those discussed herein.

Conclusions of Law

1. California ratepayers should benefit from additional generation entering the market, especially at less than market prices.
2. Non-standard energy price terms of 5.37 cents/kWh fixed for five years should allow for greater price certainty and less volatility for ratepayers.

3. Non-standard supplemental payments for QFs which are unable to recoup all of their fuel costs from SRAC prices should allow for greater amounts of generation to be provided by QFs.

4. Non-standard incentive payments for excess generation should allow for greater amounts of generation to be provided by QFs.

5. Partial payments of money owed to QFs should allow for QFs with financial problems to continue in operation, allowing for greater amounts of generation to be provided this summer.

6. Payment for excess generation at 125% of a Topock-based SRAC price for SCE and SDG&E, and 125% of an SRAC price based on the average of Malin and Topock prices for PG&E, should provide a strong incentive for QFs to produce compared to posted QF prices.

7. SCE, PG&E, and SDG&E should file reports on the contract amendments made and rejected subsequent to this decision by July 31, 2001.

8. SCE, PG&E, and SDG&E should be authorized to recover all reasonable costs associated with payments made under the approved contract amendments subject to their prudent administration of the amendments.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The non-standard contract amendments specified herein, the negotiated agreement submitted by CCC in its June 5, 2001 comments, and the five-year alternative "fixed" SRAC amendment described by SCE in its June 12, 2001 supplemental comments are approved as reasonable.

2. Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E) are

authorized to enter into such amendments with eligible Qualifying Facilities (QFs), including affiliated QFs, without further Commission concurrence.

3. SCE, SDG&E, and PG&E shall be authorized to recover all reasonable payments made under the amendments subject to their prudent administration of the amendments.

4. Payment of a portion of money owed to QFs as specified herein is approved as reasonable.

5. SCE, SDG&E, and PG&E shall report on the status of all such amendments no later than July 31, 2001.

This order is effective today.

Dated June 13, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I will file a concurrence.

/s/ CARL W. WOOD
Commissioner